

FCC MAIL SECTION

Federal Communications Commission

DA 99-819

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DISPATCHED
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),

Table of Allotments,

FM Broadcast Stations.

(Kennett, Missouri & Keiser, Arkansas)

)))))))

MM Docket No. 99-140

RM-9374

NOTICE OF PROPOSED RULE MAKING

Adopted: April 21, 1999

Released: April 30, 1999

Comment Date: June 21, 1999

Reply Date: July 6, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed on behalf of Legend Broadcasting, Inc. ("Legend"), licensee of Station KTMO, Channel 255C, Kennett, Missouri, proposing the reallocation of Channel 255C from Kennett, Missouri, to Keiser, Arkansas, and modification of its license to specify operation at Keiser. Legend indicated that it would file an application for Channel 255C at Keiser, if the channel is allotted to the community.
2. Legend filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Legend states that Channel 255C may be allotted to Keiser consistent with the Commission's separation requirements and would provide full principal community service over the proposed community of license. Further, the proposed reallocation will bring a first local service to Keiser while four stations remain licensed to Kennett. In further support of its request, Legend points out that Keiser, Arkansas, is an incorporated community with the 1990 U. S. Census showing a population of 805 people. According to Legend, Keiser has an elected Mayor and city council, provides water and sanitation services to its residents and has its own elementary school and library. Although Legend believes the reallocation should be allowed because it will provide a first local service to Keiser, it is also proposing to increase antenna height which will enable Station KTMO to provide service to an additional 495,621 people in an area of 26,501 square

kilometers. Legend further states that the reallocation will not remove service from a rural area to serve an urban area and because its transmitter location will remain unchanged, there will be no decline in service area or number of listeners reached.

3. We believe Legend's proposal warrants consideration since the reallocation of Channel 255C from Kennett, Missouri, to Keiser, Arkansas, could provide the community of Keiser with its first local aural transmission service under our allotment priorities.¹ In addition, the proposed reallocation and change of community of license to Keiser would not result in a loss of local service to Kennett since Stations KBOA(AM), KOTC(AM), KXOQ(FM) and KAUF(FM) remain licensed to the community. A staff engineering analysis has determined that Channel 255C can be allotted to Keiser in compliance with the Commission's minimum distance separation requirements at Legend's specified site.² As requested, we shall also propose to modify the license for Station KTMO to specify operation on Channel 255C at Keiser, Arkansas, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 255C at Keiser.

4. In view of the fact that the proposed allotment would provide a first local service to Keiser, Arkansas, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 255C to Keiser. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Kennett and Keiser, as follows:

Community	Channel No.	
	Present	Proposed
Keiser, Arkansas	-----	255C
Kennett, Missouri	255C, 282A	282A

¹ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3)]. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

² The coordinates for Channel 255C at Keiser are 36-07-53 and 90-11-34. The application for Channel 256A at Pangburn, Arkansas, filed by Greers Perry Broadcasting ("Greers") is short spaced to the licensed site for Station KTMO, Kennett, Missouri (BPH-970723MG). We note that Station KTMO is fully spaced to the vacant allotment site for Channel 256A at Pangburn. On March 24, 1999, Greers filed an amendment to its pending application for Channel 256A, Pangburn. In this amendment, Greers proposes a new site for Channel 256A under the provisions of Section 73.215 of the Rules. As a result, the proposed Pangburn facility now provides the requisite interference protection to Station KTMO.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **June 21, 1999**, and reply comments on or before **July 6, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Aaron Shainis
Shainis & Peltzman
1901 L Street, N.W., Suite 290
Washington, D. C. 20036

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.